

**DECISION**



*W. List*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*P. II*  
*8074*

FILE: B-192191

DATE: October 23, 1973

MATTER OF: Osrose Wood Preserving Company of America,  
Inc.

**DIGEST:**

Although bid of small business on small business set-aside exceeded courtesy bid submitted by large business, determination that bid is reasonable is not legally objectionable since Small Business Act has been interpreted to mean that Government may pay premium price to small business firms on small business restricted procurements and since bid was lower than unchallenged Government estimate.

Osrose Wood Preserving Company of America, Inc. (Osrose), protests the award of a contract to Crest Chemical & Inspection Company, Inc. (Crest), under solicitation No. 70-C0055, a small business set-aside, issued by the Bureau of Reclamation, Department of the Interior, for inspection and treatment of woodpole structures.

The bids received under the solicitation ranged from \$56,459.00 (submitted by Osrose) to \$258,189.94. The Government's estimate was \$129,980. In accordance with the Notice of Small Business Set-Aside of the solicitation (which limits the consideration of bids to small business concerns), the bid submitted by Osrose was considered nonresponsive since Osrose was not a small business. Therefore, Crest was considered to be the low responsive bidder in the amount of \$98,512.10.

Osrose objects to acceptance of the higher-priced bid. Osrose states that the substantial difference between its bid and the others submitted indicates that the procurement should not have been set aside for small business because "[t]here are so few qualified small

businesses \* \* \* that the bids are unreasonably high." In effect, Osmose objects to the contracting officer's determination that the Crest bid price was reasonable.

Although the Crest bid exceeded the Osmose bid as alleged, our Office has interpreted the Small Business Act, 15 U.S.C. § 631 et seq. (1976), to mean that the Government may pay a premium price to small business firms on restricted procurements to implement the policy of Congress. Society Brand, Incorporated; Waldman Manufacturing Co., Inc., 55 Comp. Gen. 372 (1975), 75-2 CPD 225; J.H. Rutter Rex Manufacturing Co., Inc., 55 Comp. Gen. 902 (1976), 76-1 CPD 182.

With regard to the determination of whether a price is reasonable, we have stated:

"\* \* \* our review in these [set-aside] protest situations is confined to whether the contracting officer acted reasonably in the circumstances and not to second-guessing the contracting officer's determination \* \* \*." J.H. Rutter Rex Manufacturing Co., Inc., supra, 55 Comp. Gen. at 906.

Since paying a price over and above what might be obtained on an unrestricted procurement is not legally objectionable, the fact that a bid exceeds a "courtesy" bid (as submitted by Osmose, see 49 Comp. Gen. 740 (1970)) or the Government estimate does not necessarily mean that the bid is unreasonable. There can be a range over and above the low bid or offer and the Government estimate which is in a reasonable price range. The determination of price reasonableness requires a degree of discretion. Therefore, contracting officer determinations dealing with price reasonableness will be sustained barring bad faith or fraud or unless the determination itself is unreasonable. See CDI Marine Company, B-188905, November 15, 1977, 77-2 CPD 367; Culligan Incorporated, Cincinnati, Ohio--Reconsideration, B-189307, November 7, 1977, 77-2 CPD 345.

Here, there has been no showing of fraud or bad faith. Rather, the record shows that Crest's low responsive bid was believed to be reasonable for the work involved since the bid was substantially below the Government estimate. Osmose has not challenged the validity of that estimate.

B-192191

3

In view of the above, the protest is denied.

*Paul G. Stubble*  
For the Comptroller General  
of the United States